



# You Be the Judge—Top Staffing Cases From 2015–16

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# Risk Is Often Everywhere but Hard to Really See



**Tort Liability**



**Exempt / Nonexempt**



**Restrictive Covenants / Trade Secrets**



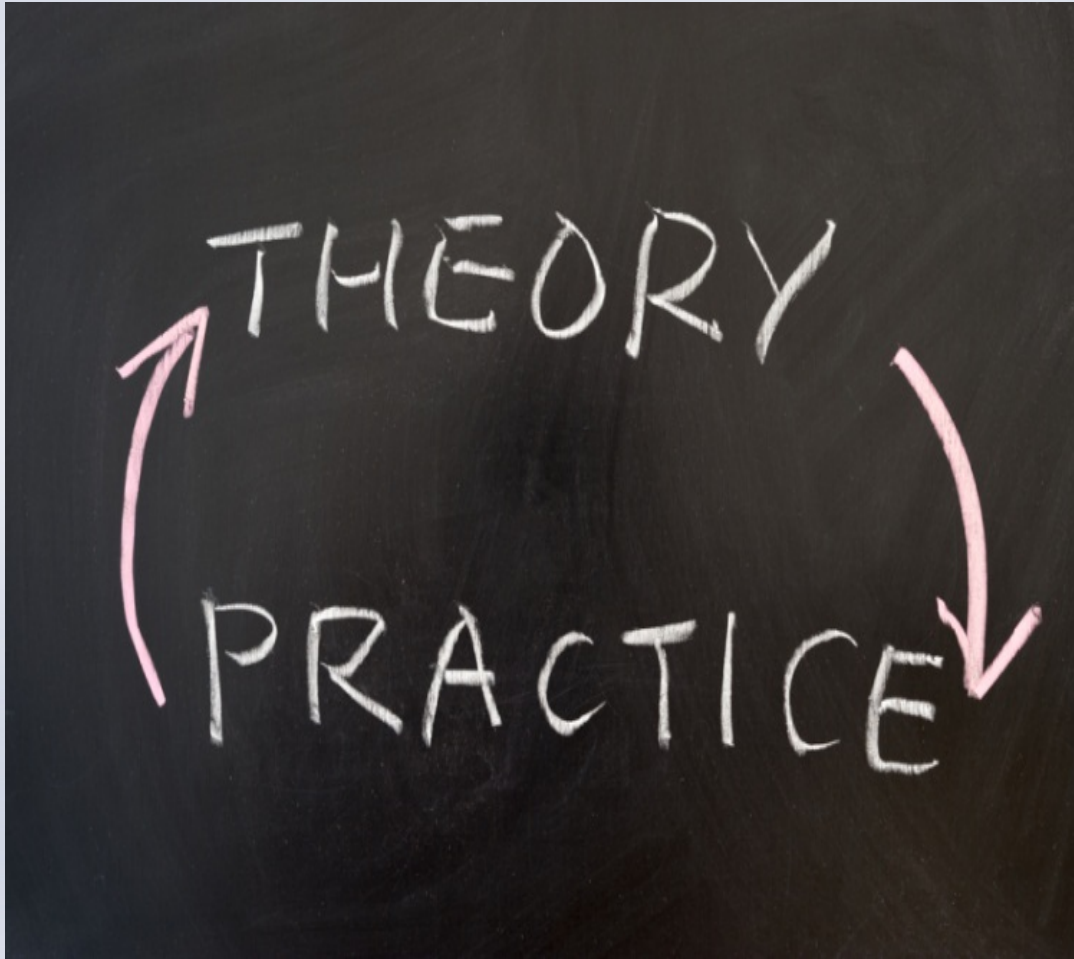
**Joint Employment**



**FLSA**

# But What Is It Really Like?





# You Get to Decide



# How This Time Will Work

- Will present three cases, time permitting
- Each side will be either plaintiff attorney or defendant attorney



- The audience will vote at the end of the proceedings, and Chief Judge will provide verdict
- Cases are adapted from actual cases. Attorneys will discuss the verdict and legal theory applied in the real-life version, and answer questions



# Let's Get Started!



# Employee or Not?



The Law

- An individual who is (1) free from direction and control and (2) customarily engaged in an independently established trade, occupation, profession, or business is *self-employed*

# *Gold v. Gelman*

- The Players
  - **Gelman Group:** International online expert network that connects clients in the market for expertise with experts in Gelman's network
  - **Vera Gold:** An expert in online mapping, GPS-based navigation systems, and wireless devices

# The Key Facts

Gold was terminated by a prior employer and filed for unemployment benefits

Gelman found Gold's résumé online and contacted her to be part of its expert network; Gold accepted

Gold set her own hours, rate of pay; worked from home; had no obligation to accept assignments; was free to work for others; signed written agreement saying that she is independent contractor; received no training, evaluations, or instructions from Gelman

Gold submitted online bio that Gelman posted on its website—clients review her bio and if interested, Gelman notifies her that client will contact her

Gold accepted four consultations over two months and charged \$375/hour—Gold reported this income on her unemployment claim form

# What Happened?

- Gold applied for unemployment benefits; was initially denied. Gold appealed.

**NOT APPROVED**

# The Issue and Law

The Issue

- Is Gold self-employed? Is she is ineligible for benefits?

The Law

- The Law: An individual who is (1) free from direction and control **and** (2) customarily engaged in an independently established trade, occupation, profession, or business is self-employed...and therefore ineligible for unemployment benefits

# The Verdict



# *Trek v. Hanson and Charlestown*

- The Players
  - **Mark Hanson:** Former account manager at Trek who, bound by nondisclosure and nonsolicitation provisions, accepted employment at Charlestown
  - **Trek Inc.:** Professional staffing services firm with dozens of offices, thousands of staffing specialists, and many “Fortune 100” clients
  - **Charlestown Inc.:** Professional staffing services firm, recently recognized as a top temporary staffing firm



# The Key Facts

Hanson signed a nondisclosure agreement, preventing the disclosure of Trek's confidential and trade secret information, and a nonsolicitation agreement, preventing the solicitation of Trek's clients for twelve (12) months following his termination.

Hanson, while still employed at Trek, accepted a job offer at Charlestown and emailed company documents to his personal email account. These documents included client lists, names of hiring managers, and organizational charts.

Upon employment at Charlestown, Hanson began to solicit business from Trek's client lists.

# What Happened?

- Trek sued Hanson and Charlestown for breach of restrictive covenants and misappropriation of trade secrets, and sought a preliminary injunction.

# *Trek Inc. v. Hanson and Charlestown Inc.*



The Issue

- Are Hanson's nondisclosure and nonsolicitation agreements enforceable and, if so, is Trek entitled to a preliminary injunction?

# *Trek Inc. v. Hanson and Charlestown Inc.*



The Law

- Nondisclosure: A trade secret is information including but not limited to technical or nontechnical data, a formula, pattern, compilation, program, device, method, technique, or process that derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use.
- Nonsolicitation: Restrictive covenants are enforceable only to the extent that they are demonstratively reasonable by protecting an employer from unfair competition without imposing unreasonable restraint on the former employee.

# The Verdict



# *Laud v. Moderno Inc.*

- The Players
  - **James Laud:** An at-will temporary employee engaged with recruiters and staffing firms
  - **Moderno Inc.:** Staffing firm offering global information technology staffing services

# The Key Facts

Moderno employee emailed Laud about an available position with an initial term of six months, and a high likelihood of extension and conversion into full-time employment.

Laud accepted the position and entered into an at-will employment agreement with an integration clause overriding all prior written and oral communications.

Laud was fired from the position after four months.

# What Happened?

- Laud sued the staffing firm for fraudulent misrepresentation, arguing that he reasonably relied on Moderno's promise that he would be employed for at least six months with a likely conversion thereafter.



# *Laud v. Moderno Inc.*



The Issue

- Is Laud's reliance on the email justified?

# The Law

The Law

- **Fraudulent Misrepresentation:** The elements are (1) a false statement of material fact; (2) known or believed to be false by the person making it; (3) an intent to induce the plaintiff to act; (4) action by the plaintiff in justifiable reliance on the truth of the statement; (5) damages caused by the reliance.

# The Verdict



# Questions?



# Thank You for Joining Us!

